

**LAKE COUNTY PLANNING BOARD**  
**February 14, 2018**  
**Lake County Courthouse, Large Conference Room (Rm 316)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Steve Rosso, Sigurd Jensen, Rick Cothorn, Frank Mutch, Lee Perrin, Janet Camel, David Goss, Abigail Feiler

**STAFF PRESENT:** Jacob Feistner, Lita Fonda, Wally Congdon (portion); others in attendance in audience

Steve Rosso called the meeting to order at 7:00pm.

**LAKE COUNTY GROWTH POLICY WORKING SESSION (7:00 pm)**

Jacob outlined they would follow what was publicly noticed. The goal was to work on the draft appendix regarding the advisory text for the Density Map, and follow up with how that would work with chapters 8 and 9 of the growth policy rewrite, and get some good constructive work on that. Last month, chapters 1 through 7 had been pretty well covered. They could focus tonight on chapters 8 and 9 and that advisory appendix. Regarding timeline, this was the second public hearing on the growth policy rewrite and was somewhat of an extension from last month. They were continuing to take comments on the rewrite. The goal was to come back next month with draft 3 and get a recommendation from the Planning Board to take to the Commissioners, who would pass a resolution of intent to adopt, revise or other. For the growth policy, the statutes said the Commissioners would pass a resolution of intent and did not address beyond that. The Commissioners would have some leeway there, as far as holding another public hearing and regarding how long between the intent and the adoption. It was different with zoning.

Steve noted that currently a resolution for an intent to repeal the Density Map and Regulations (DMR) had been made. What was the process for removing a regulation? Jacob explained the Montana statutes didn't explain repealing. They addressed adopting or amending. Lake County was closely following the process to adopt. He gave details.

Steve said the amendment they would be discussing tonight was a version of the existing DMR with a lot of edits. Tonight's discussion would involve chapter 8 Land Use Development and Local Regulations and chapter 9 Implementation, listing goals, objectives and actions.

**Public comment (7:06 pm):**

Mary Stranahan of Arlee was against the repeal of the DMR. The Jocko Valley was rapidly becoming a bedroom community for Missoula. She wanted every sort of density regulations possible to protect the land close to what it was today. She understood that last summer a survey showed that 80% of the people didn't want to see the DMR go away. Was that correct? Steve said Joel could address that later.

Jordan Thompson, attorney for the Tribes, said this Lake County growth policy document should represent the growth policy constituents. In 2016, County constituents came out in

overwhelming support, according to Ann Brower's words, in support of keeping the DMR as regulatory. At that time, Bill Barron said 80% of the comments came out in support of keeping the regulations as regulatory. Land Solutions conducted two online surveys this summer and the results were similar. 68.5% opposed repealing the DMR and simply addressing its goal within the growth policy. Only 11.3% supported the Commissioner's current 'repeal and replace' idea. The community came together and put together the DMR document in the early 2000's. That was what they felt was right for the community. It was clear that the community sentiments remained, and seemed to be swept away by the [amended] paragraph in chapter 8, pg. 55 [just above 'Density Policies'], whose first sentence he read. (See 'pg. 55' draft amendment document in the 2/14/18 meeting file.) Which Lake County residents weren't impacted by what happened to the lands? We all lived here and knew how beautiful and special the place was and enjoyed that. Folks wrote in, in overwhelming support. The Commissioners said they also ran into people at Safeway. Were only those at Safeway impacted? Why were only certain people listened to?

Jordan read the next sentence of the paragraph. If the Commissioners were worried about legal liabilities, he'd be more worried about putting citizens into different classes and then only listening to some of them more than others about something that had been in place for 13 years without litigation. He briefly described his legal background. The DMR's looked legal to him. They'd been created through a very public and very scientific process. He described certain areas such as prime agricultural areas, pristine environmental areas, sensitive aquifers and existing densities that were looked at. These weren't arbitrary standards that came into being for the DMR. Based on this information, he believed these were legal. He reached out to an attorney who recently won a Supreme Court case decision on zoning for a second opinion, who agreed with him. He was happy to talk to more attorneys if there were more questions.

Jordan moved on to the comment on the next page of the amendment draft that said there was no solid evidence that the DMR achieved the purpose for which they were written (see second page of 'pg. 55' draft amendment document in the 2/14/18 meeting file). He didn't know that there was evidence that they hadn't worked. The pristine areas were still there. They had community [inaudible] to keep this intergovernmental cooperation in place. He thought that was a really cool thing, and he thought that was working. He'd like more information on what evidence there was. His final point was process. This was a huge change that was proposed in opposition to an outpouring of public sentiment and an outpouring of people trying to step up and come up with reasonable solutions. The Commissioners said over and over in their testimony that they would like to keep things that work and take out the things that didn't. He recommended doing that instead of taking a logic leap and making an assumption that the only way to do that was to make the DMR advisory. If the DMR hadn't worked well in some areas, that was cause to look at how to strengthen it rather than to get rid of it. The community, Planning Board and Tribes all offered to find ways to make it a better document. He didn't feel like they'd had a meaningful opportunity to do so.

Jordon said the Tribes heard complaints that it wasn't regulatory for them. Two years ago, they emailed the Commissioners and offered an MOU (memorandum of understanding) that if adopted, would say that the Tribes would pass a resolution to make them regulatory. They didn't hear back for two years, then heard back that it wasn't reasonable because each party had an

opportunity to withdraw within 60 days. They could make that a year or two years; they were open to those kinds of solutions. The Tribes wanted to continue to talk about this. If there were issues, they wanted to talk about this. The Commissioners pointed to the regulations being advisory for the Tribes and that this worked well for them. It wasn't advisory because [the Tribes] always followed this. To make it regulatory wouldn't be a meaningful change. They would still always do it. He pointed to the conditions and the day, and noted the room was still full of people. The community was engaged in this process in a way that was astounding. He thought they'd all like more time to think about this. The language made a lot of assumptions. He recommended going through chapter 8, pg. 55 and 56 and taking stuff out. There were startling assumptions.

Gale Decker, Commissioner, addressed Jordan Thompson's statements. Regarding overwhelming support for the DMR, there was a significant amount of public support. Lake County received 265 postcards, which had prepaid postage and were preaddressed to the Lake County Commissioners with a completed statement. Those just needed a signature. He read each one. Few made additional comments. Some of those showed that many of the people who filled them out didn't have knowledge of the DMR. They'd been asked to sign it and then it was sent. He questioned where some of the overwhelming support came from and how valid it was. The second case was the MOU. He checked with the Lake County IT Dept. Their server did not receive an email from CS&KT with an MOU. If CS&KT could find evidence of it, he asked that they please bring it to Lake County. They had no MOU from CS&KT, Janet Camel or Tribal Lands in 2016. He hadn't seen the MOU until the day after last month's Planning Board meeting. Part of this MOU stated the object of where they wanted to be with this as far as Lake County and Tribal government. He read, "Whereas it is hoped that the Lake County government and the Tribal government will develop and implement parallel land use and development policies that affect Tribal and non-Tribal people and lands." He commented that if Lake County and CS&KT both used this as advisory then they were on equal ground, which was what the MOU stated as an objective. The MOU was not legally binding nor was a resolution. If they entered into an MOU with a 30-day withdrawal period, and this was adopted as part of the County growth policy as zoning, for the County to remove it as a regulatory document [and change it] to advisory, they were looking at a very long and expensive process. Withdrawing from the MOU would be quite simple for CS&KT. Withdrawing from the MOU and repealing the DMR would be very difficult for Lake County.

In the growth policy, Gale said the Commissioners identified the biggest challenge Lake County faced as the loss of revenue due to lands being put in trust. Speaking for himself as a Commissioner, how could he say they had this problem and then support regulations that supported that [Tribal Land buyback] process? Today, a letter from BIA identified 5000 acres being considered for Trust. It was an issue. Lake County had to solve it. Moving the DMR to an advisory document didn't mean the sky was falling. There was not going to be a significant change here in the reservation or Lake County as far as the development of properties. In moving it to advisory, CS&KT and Lake County were on the same playing field. They would use them as advisory and follow the framework of the DMR. They would be taken into account when they made decisions. The DMR weren't going away and there wouldn't be a free-for-all as far as land development in Lake County.

Chuck Wheeler had been coming here for 10 years and recently joined the County full time with a purchase of almost 40 acres on Back Road. He began reading the documents last year. He continued to work remotely. He had lived in San Juan County, New Mexico for about 25 years, where there was a similar buyback program that hurt the tax base. Regardless, to claim that many residents weren't affected, he was definitely affected. Part of the reason he chose to buy property here and move here was the DMR. It was very attractive to him. He now owned property where he could split off 20 acres if he wanted. That low density housing was part of the reason he moved here. He was highly sympathetic about bedroom communities, having spent many years in Arvada and [inaudible], CO and Rock Springs and Gillette, WY and having seen the byproduct of unregulated growth. Although the current commissioners could have integrity, that might not always be the case. An advisory document allows finagling. A fixed document with definite plans in a regulatory framework told us where that development and density would be and let us anticipate that. In Westminster, his neighborhood only had sidewalks on one side because of a deal with the City Council. He had certain knowledge of what unregulated development happened in oil and gas or mineral fields and in suburban neighborhoods. He would like to see a fixed document. He had no issues with amending the document. There were probably places that would be well served by development around some of the cities, and planned developments, or a fixed plan with amendments based on a developer that came in with a plan and worked with the County Commission and the planners, and proposed specific things to deal with development. That would be very acceptable to him. Having an advisory document was not. Even though it might not be great data, it was the only data you had. In the absence of other data, you needed to consider it. He briefly read as many of the written comments that he could and recently submitted his own. They all seemed to be against killing the DMR.

Robin Steinkraus, executive director of the Flathead Lakers, gave some additional comments. They'd submitted both written and oral comments on Jan. 10. She presented comments, then shared a written version of the comments. (See written letter in the 2/14/18 meeting file.) Her comments addressed the costs of rural subdivision growth, the benefits of county land use policies and regulations, and the benefits to residents and visitors from the healthy environment and quality of life supported by the area's natural resources. Her group recommended evaluating the DMR, working with interested parties to remedy problems rather than repealing it, and delaying the decision to make the DMR advisory until this evaluation could be completed.

David Passieri, a realtor from Mission, spoke with a lot of people who were selling because of the unknown. The Commissioners were clear that they had a concern about County failure, which was spelled out clearly in the growth policy and expressed here tonight. Where did County failure leave the concerns about the certainty of having the DMR? The DMR would create mostly a 20-acre density zone throughout the valley. He thought that created a criminal intent in a lot of minds regarding how to get around this DMR. Did the County have the jurisdiction to create this blanket zoning? Maybe they did. It hadn't been challenged in the courts. A lot of liabilities seemed to be present in the current way the DMR was written. It wasn't meant to be regulatory. They'd heard good reasons it should be considered advisory and he supported that. Referring to the criminal intent that he mentioned, you could do a family transfer and get around the DMR and subdivision rules. There were other ways. Land could go in and out of Tribal Trust. Restricted deeds to Indian lands were created. The title insurance that was issued didn't create coverage for that if it was challenged in the future by the CS&KT

Corporation. This was another way that people were creating subdivisions who didn't agree with the current DMR. Court order could break this DMR. People would certainly not be protected by the current DMR. He supported using it as advisory and allowing for smart growth, although he didn't like that terminology.

David P said 60% of the County residents were living in the rural areas, outside the heavily populated areas. People were generally attracted to the open space and the open lands around. A lot of buyers weren't looking for such large acreage because it didn't support itself. Someone new to the area might not recognize the compact that currently existed as state law, and was pending congressional approval. He talked more about the compact and related items. A report showed that by 2013, there would be a 2% reduction in Lake County's population. That seemed odd. A fiber optic system was being put throughout the valley, which would promote a new industry of folks who would seek rural living and lifestyle, maybe on 3 acres instead of 40. Services were already available and in need for these rural areas so why restrict the growth in these areas? He asked how paved roads could be achieved as a goal to minimize pollution (dust). Paved roads would create safety. He objected to the way the growth policy was written. There was no trajectory of where fee simple taxable lands, having gone into tax exempt status and seeing no history, what that looked like. Using that evidence, what did it look like as a trajectory and how did you counterbalance that? He thought Gale Decker was speaking to that yet some people weren't hearing it. He pointed to a covenant developed on a reservation in Hobart Village, WI that restricted lands from going into a tax exempt status. It had been challenged in courts and held up. Why didn't we have something like that in the growth policy? He recognized there were two governments and talked about those. He wanted to see the growth policy recognize and speak to the concerns about county failure. The growth policy didn't hit home on the core issue and then give solutions to that core issue of county failure.

Leslie Van Stavern Millar, Arlee, was a land owner in a rural area, as were other members of her family. She clarified it was not just people restricted in the towns that supposedly were not being affected by this stuff. It sounded to her like the county failure would be a failure of the County to listen to what the people had expressed over and over again. She spent a lot of time two years ago coming to the meetings about this very issue. It was remarkable to see the level and diversity of support. The realtors of the lake and various areas realized that in fact, throwing the rest of the county open in the way they were talking about would actually have a detrimental effect on land values and people's happiness with where they were. She thought they'd shot that down. It was very clear that people did not support the idea of throwing out the DMR and that there would be a revision committee. A friend on the revision committee was never called. Two years had passed without addressing the issues that needed to be addressed. Why not improve what existed and look at the things that were problematic but not throw it out? As to advisory, the word 'advisory' sounded good but you needed to have structure and rules. That was what people put so much time into developing previously. As far as she was concerned, it worked. They were looking at the value of living here. It didn't all translate into the revenue that would be produced by selling off small pieces of land so a select group of realtors and landowners would be able to go to the bank and leave the rest of us suffering from the results of poor planning.

Leslie read the statement written by [Land Solutions?], in November. They talked about the statistics, which had already been discussed, which was that 56% of the respondents favored updating the DMR and that 68.5% opposed repealing it, and only 11.3% supported repeal or replace. She took time to go to those meetings, which were called abruptly. The last meeting was in Arlee. The surveyors noticed more people came to that meeting. She thought it was because they had two weeks to find out about it. It was clearly expressed two years ago that people didn't want to throw the map out and were open to revising it, and this issue had come up yet again. It started to feel to her that this was being driven by a personal agenda on the part of the Commissioners, and possibly one Commissioner. What was motivating that? Was it personal gain or a lack of respect for Tribal sovereignty? She didn't know. It was confusing to her that she would have to come up here in a snowstorm to talk about this, when [the public] had clearly expressed their will. Maybe the Commissioners didn't want to listen to the public. Then why would taxpayer dollars go to pay for a survey where [the Commissioners] didn't listen to the results? It didn't make a lot of sense and wasn't very efficient. If you imagined that Missoula would not encroach on Arlee in the next 10 years, you were dreaming. This area was going to explode. Having no regulations, under the guise of advisory in this area, would allow people to cut it up and make it an unpleasant place to live so the reason you were here would no longer exist. She asked that if they had strength of purpose and the ability to persuade the two Commissioners that were perhaps not so invested in repealing this, that you work with him and them and come up with something that worked for everybody.

Steve checked on the number of people who were waiting to comment, and encouraged succinctness.

Carole Lankford was on Tribal Council and was a taxpayer. She normally carried her tax bill with her to prove this. She stood in support of the DMR. She showed the cards they had printed. For the last two days, she talked with people, included a meeting today with 50 people. She went around and spoke with each one. It was a free country. If a person decided to write their name and address only, that was their decision. Some people wrote things. She encouraged them to keep it clean and not to include issues they might have with a certain commissioner. They'd gathered quite a few of them, and [the County] would get more of these. These were people who sat and listened, and wanted to know about the DMR. Gale said that was fine. They took them and they read them. Carole said she wanted to make that clear. She worked her tail off for the last few days. She thanked [the Board] for their time. She appreciated their service.

Don Winston lived up the Jocko Canyon for more than 50 years. He and his wife had more than 200 acres. They were limited to 1 house per 40 acres. He loved that. It really protected their land and the value that they had in their land. The reason they had such a beautiful county was because of the DMR. People who would like to have 20 acres because they had open space had an investment in that 20 acres. He was sure that with that DMR they were protected from having a trailer park or some other development next door. He thought that was why the county was so highly prized. He was here tonight because he'd heard the DMR was threatened. He was speaking out strongly to preserve the DMR for this reason: If you were living out there in the valley and you thought you were in a 20-acre area, and you suddenly found out that wasn't the rule, then where did you go to protect your investment? He spoke for development and refinement of the DMR. If you had the density map in front of you and then took what was

concretely there, and decided where to modify it, then people knew where they stood and what the value of the land was going to be. He urged them to retain the DMR and work to modify it as people in the community and County would like to modify it.

Bob Stone had previously been on the Planning Board, which had been given a task as a board to look into the DMR about 2 ½ years ago. He knew nothing about it and began to ask people about it. The overwhelming number of people who knew anything about it had worked very hard to create it. He found very few reasons that were credible from people who didn't like it. He became convinced that it was something that the County needed. There was a big push to fulfill the request from the Commissioners to get public comments. He remembered emails rather than postcards. Roughly 2 years ago there was a meeting with a proposal that he thought was voted on to create a group of citizens who would try to find out why the people who wrote very short emails were so much in favor of the DMR and against repealing it but did not give reasons. The committee might have been supposed to do other things but that was the one he remembered best. He asked Wally more than once about the status of the group. It had no status and had never been created. People told him they'd like to be on that committee. He referred them to the County. He didn't know if they got called but he didn't think the group that was supposed to do the investigation was created. That group would probably answer Gale's question about what the postcard people who just signed their name were thinking. People were kind of lazy and not articulate in many cases. He didn't think that packet of postcards was a huge problem. He'd heard a lot of things tonight from people who were against making the DMR advisory. They'd pretty much covered it so he wouldn't add more if he told his reasons. He was a realtor for around 10 years. He was surprised that David Passieri was in favor of making this advisory. He knew a lot of realtors around here. They weren't in favor of scrapping it or making it advisory, which might be the same thing. He reiterated a point someone made earlier that advisory was fine if you had good people but not when you got some people who got elected who shouldn't. There were a lot of corrupt politicians and conmen. He thought they were creating loopholes [with an advisory document].

Gale clarified what happened with that committee. He looked at the meeting minutes. A motion was made by Commissioner Bill Barron to extend the comment period and form this committee or task force that Bob Stone mentioned to look into these comments. Commissioner Ann Brower seconded the motion. The vote was 1 to 2. Gale voted against that. He thought they'd taken significant public comment. That was the motion that the Commissioners passed at that time. Commissioner Ann Brower was not reelected. He wasn't going to make the push to form this task force because he voted against it. He thought that was why the committee never came into being. There was no push from the Commissioners' office to form it.

Bob S said he knew they moved slowly in this room. It was the reason he didn't come here anymore. He wasn't surprised that the task force didn't get created once one of the Commissioners lost the June primary. Gale was making it sound as though he was assuming that something might happen and that if he stalled long enough it would go away. Wasn't the purpose of that task force to investigate the people that had only written short support letters and hadn't given reasons? Wasn't Gale the one who said he was curious to know what these people were thinking and whether or not they were parroting information from their group leader? Gale said he'd have to go back and look at those comments. There was a resolution of intent to repeal

the DMR that never came to a vote. The motion to create this committee came to a vote, which he voted against. Commissioner Bill Barron and Commissioner Dave Stipe, who was not part of that, probably would have been the push to form that committee. Bob S noted people in the community were anxious to be on that task force. The Commission had months to create it and it never happened. It was up to the rest of the people in the County to figure out why. Gale said he never had a person approach him and ask to be on the committee. Bob S and Gale thought that maybe this was because people knew how he felt.

Tom Moss came to listen and be more informed as a County landowner, year-round resident and business person. Just in listening to people's comments, the reasoning behind changing didn't seem very sound compared to the reasons for maintaining a regulatory map. It hadn't been shown to not maintain what most residents in Lake County thought was great about the County. Wondering why people did or didn't support what was going on seemed like an odd reasoning for changing it. Density was imperfect, like he thought it said in the document. It was in place. He didn't understand why it should be changed, as a person who, like all residents really, liked the county the way it was.

*Public comment closed.*

#### **Working Session (7:59pm)**

Steve confirmed with Joel that the production of the third draft was waiting on the Planning Board to get through this document. Joel believed the plan was for the Commissioners to give feedback on the comments of last month and this month, and then they would prepare draft 3 after sorting through the comments with the Commissioners.

Steve reiterated the request for a map showing different jurisdictions in chapter 8, beginning on pg. 53, and the question on whether the Polson Development code made it into the objective in chapter 9.

Chapter 8:

Dave G, pg. 53, Introduction: It would be helpful to put in some hard numbers on who had jurisdiction over how many acres of land. How much were the Tribes responsible for and how much was the County responsible for? It would help to understand the degree of overlapping jurisdiction or dual jurisdiction.

Frank thought they needed to tie down the land ownership and be clear on that, even if it cost some money beyond the contract, without a huge expense or time. Maybe they needed a volunteer group to work on that. He cited the Flathead Watershed Source Book, which was [produced by] a consortium, as saying 2/3 of Lake County was reservation and that the Tribes owned 60% of it. His math gave that as 40%. The growth policy said 17% was federal in Lake County. They weren't looking at State properties, highway and federal /state road systems, churches, government buildings and schools. The tax base ought to be a huge issue in looking at the future of this county. He didn't think the percentage of Tribal land included Trust properties.



Steve pointed to a comment on pg. 40 in an earlier chapter about the percent of land in the County under federal ownership. Some of the data might be buried in a few of the other chapters. Frank said it listed 17% in one chapter for 'other federal'.

Pg. 55-58, Density; also 2-page draft in packet, beginning with 'pg. 55':

Steve said a suggestion was made to replace the draft Density section in the draft growth policy with the draft Density section included in the staff packet. In the existing draft, there was support for keeping the DMR. Discussion included making amendments and so forth, and key issues to preserve by keeping the map. The replacement text centered around either getting rid of the DMR or making it advisory. One task tonight for the Planning Board was whether to edit the copy suggesting keeping the DMR or the copy that got rid of the DMR. Frank said it was to repeal and replace rather than to get rid of the DMR. Steve asked for comments on the direction to go.

Janet said her concern mirrored that of many speakers tonight. They were going too quickly as far as repealing and replacing. She thought they were supposed to address the issues in the growth policy, make recommendations and then address the DMR in a separate process. It was premature to amend the growth policy and repeal the regulations next month before they even adopted the growth policy. They shouldn't repeal the DMR until the public had enough time to see the next draft [of the growth policy] and to continue to provide their comments. This was supposed to be a public process. The County attorney had said planning wasn't a spectator sport; it was a participatory process. The people who had been participating overwhelmingly wanted to keep and amend the regulations, not repeal them. If you were talking to people in the stores and on the streets, why weren't they coming to the meetings and sending in written comments or postcards? They were all supposed to be participating in this process. A lot of people had spent a lot of time participating in these meetings, month after month and year after year, with overwhelming support not to repeal. Yet [the County] scheduled a public hearing prematurely. [The Board] needed to have time to work on this growth policy, make sure that the comments were being addressed and that the public had time to review the new draft and provide comments again on it. She thought it was irresponsible to move too quickly. It wasn't in the public interest. The public did not want to see this happening.

Frank thought he was the only person in the room present when this stuff was jammed down their throats. It wasn't true to say the public came together. That meeting was overwhelmingly against having this imposed as regulations in 2003. A commissioner prior to that said it was changed from what his version was. The issue wasn't the content. The issue was that the 3<sup>rd</sup> paragraph said it wasn't intended to prescribe land use. He read from it. He had argued it was de facto county-wide zoning and was told that it wasn't. It had become zoning. He thought it was a lie from government. State law didn't specifically discuss density map and regulations in the statutes so he didn't think it was authorized or discussed. The growth policy was discussed as advisory. He repeated that if the growth policy was advisory then he thought items resulting from the growth policy should be advisory. It wasn't based on county-wide acceptance or consensus. He agreed with Gale that the sky wasn't falling. This wasn't going away. The good would be kept.

Steve wanted to see if they could get around some of the semantics tonight. He proposed that when they used 'land use', what they meant was residential, commercial, agriculture: those kinds of things were land uses. When they talked about subdividing to a high or low density, they were talking about density. One problem with the rewrite of the DMR as proposed here was it had the same problems in that those distinctions weren't made. 'Use' was put in where the word 'density' belonged. The word 'use' was, in some places, where it meant different type of uses, like residential, commercial, agricultural and industrial. In the paragraph that Frank referred to in the old regulations, where they said 'if it described use', they were talking about commercial, residential, agricultural, business, industrial and those kinds of things. He thought that was important. The other important thing that Frank brought up was that they try to get some help, possibly from Wally Congdon, about whether or not having this advisory could do the same kind of things as having this regulatory. They'd heard tonight from people that were very concerned about making it advisory and other people who said it didn't matter—it could be advisory and would still perform the same functions. He thought that was something the Planning Board needed to understand better.

Frank said a major issue was to keep people from living in the country, and to pack and stack people in towns. He thought 7 of the Board members lived in rural areas. The majority of folks came here to live in the country. He thought those who lived in rural areas wanted to keep it rural and didn't want other people to have what they had. It was a problem. How much could the government dictate where people lived? People needed to understand that if they lived in the country, it was going to cost them possibly more. A big concern was environmental. Did that mean the sanitation and subdivision laws weren't valid and they didn't trust the government employees in charge of these things?

Janet noted she was also present, contrary to Frank's claim, when the initial work was done on the DMR. The County planners sat down after there was a committee to look at what the people wanted to see protected. The key word was protected. This included farmland, groundwater quality and wildlife habitat. They did a public opinion poll through the University of Montana (U of M). The overwhelming majority of the people in the statistically valid survey wanted to see these values protected. They joined with the U of M Law School, the Land Use Law Clinic, Dave DeGrandpre (then County Planning Director) and herself (CS&KT Planning Director) and a Missoula County planner to develop regulations to protect these areas. It morphed into the DMR. When County planners Dave D and Sue Shannon were developing this, they told her they looked at the existing densities in the area and the existing lots that had been created. They tried to mirror similar densities that would still allow for growth and subdivision. In the one per twenty areas, she saw quite a few smaller lots that were still in existence that were still there and could be developed if vacant. People were looking at subdivisions so far out of town that it was causing problems with more costs for citizens such as road maintenance, snowplowing and so forth where subdivisions were being approved, and more expenses for police, fire and school buses to get there. They looked at this in a fiscally responsible way to figure out how to protect the values, allow for growth and protect the taxpayer investments in the infrastructure. She outlined more history of the development of the map, including taking sewer into account.

Frank interrupted to say he wasn't arguing the merits. He thought it should be equally applied. He didn't agree with her objectives.

Janet explained the MOU said they would make the map regulatory and also make the cluster bonus regulatory. They would work on changes that might need to be made together. She emailed [the MOU] to them. She didn't know what happened to the County server. Commissioner Ann Brower got it, sent a second draft and also met with Tribal Council. Gale and Janet disagreed on this point. Janet said she also went on record at Planning Board meetings saying that [the Tribes] could possibly incorporate this into their land ordinance. They already had plans along the Flathead River that didn't allow new development unless you were in a clustered area of which there were three. They looked at the one per forty for the non-Tribal land to protect those resources in that very special river corridor. The same was true with the Jocko River corridor, which was sensitive for bull trout and endangered species. It needed to be regulatory and [the Tribes] were enforcing this 100% on Tribal lands. The newspaper said they only applied them in an advisory way. That wasn't true. They voluntarily complied with the regulations. They had gone on record repeatedly saying they would make them regulatory if that was what the issue was.

Steve noted development on fee land typically was done by a private developer. For development on Tribally owned land, were there private developers making decisions? Janet said it was done by the Tribes. Steve asked if there was a difference between having a rule that the Tribes followed and having a regulations since they were the only developer. Most developers he knew were good people who wanted to do the best thing for the land and the community but there were a few who wanted to make a pile of money and disappear. Those were who the regulations were for. Gale said they still had to follow Lake County subdivision regulations. Steve said they could pick what land they developed without the DMR. They could buy 160 acres against the Missions foothills and put in 100 houses or at least make that application. Gale said if the DMR were used as advisory, the Planning Dept. would not put a stamp of approval on it. Steve asked if this were advisory and that developer was denied the hypothetical 100 houses up there on 160 acres, did the developer look for land elsewhere or could he go to court and say the decision was subjective and arbitrary and eventually get to do what he wanted because there was no regulation that stopped it. Gale thought the developer could say the same thing, that the number was arbitrary, if it was a regulation. Steve asked if having regulations that decisions were based on as to whether to approve a subdivision, was that different than having a policy attached to the growth policy.

Wally said growth policies were advisory and set policies, goals and objectives. You implemented the goals and objectives by using the other regulations you had, which were zoning, subdivision review, subdivision standards, health and sanitation, economic development planning and comprehensive land use plans regarding economic development or capital improvements. The other things you had were the tools of how you got there and how you implemented it. The problem with county-wide zoning for density controlled one thing: density. It didn't give you the other amenities. Controlling density itself didn't give you agricultural land, wildlife habitat, clean water or no pesticides. He talked about some history and examples where the parcel size that could be developed without review drove the development of unreviewed parcels because they could only regulate density. They didn't incorporate that into the question of subdivision regulations, as a guideline for sanitation rules or as a guideline for how to do capital improvements planning. The County subdivision regulations solved a lot of

those problems. The problem was they didn't have a density guideline in the growth policy. [They could say] density was an issue to consider and they wanted to save five things: agricultural opportunity, wildlife habitat, stormwater drainage, groundwater quality and no septic/sewage. When that was in the growth policy as a consideration for subdivision review, it was easy to take a subdivision, change it and fix it, and have a good reason to do it. You had to consider what was in the growth policy in the subdivision process. You could change the subdivision based on what the growth policy did.

Steve thought the DMR were implemented because of implementation parts of the 2003 growth policy. Joel said that was exactly what happened. Wally said they were not. Janet said they were incorporated as a tool to be developed. Wally said they were incorporated as a tool. The problem was the quantum leap from controlling just density to give you water quality wasn't in there. On the current growth policy draft, Steve mentioned the section starting on pg. 55 headed by 'Density'. It talked about many of the things Wally mentioned and also the DMR. Did this section here in draft 2 solve the issues that Wally brought up about having to have a density discussion in the growth policy? Wally said it solved a bunch of it. He could take the density guideline to the staff to write the reasons why you couldn't build a 40-lot subdivision in the middle of [inaudible]. Steve said the way [the growth policy] existed already without making a big edit supported the DMR and provided what they needed. Wally said the problem was the way it was worded now, the Density map was a map for density that was zoning. It didn't let him do anything with subdivision to say that one couldn't be done. You couldn't impose zoning using subdivision. Zoning was a regulation that stood on its own and was separate. The zoning told you how much density you could have in a subdivision but he couldn't do the other stuff that went with the Density map. He couldn't regulate stormwater, agricultural use, fences, dogs or the other stuff he had to do if you were truly to get amenity value.

Janet said it could still be one of the tools. Wally thought it worked better as a tool to consider it in a subdivision process. Then you could do those amenities. Steve voiced a concern that, by making it advisory and non-regulatory, he didn't see how it was enforceable. Wally said it was enforceable with subdivision rules. Steve replied they would have to go through the subdivision regulations and make sure they had those things in them before it would make up for the advisory DMR. Wally said that was one part. Steve asked what the other parts were to make up for making the DRM advisory. Wally said there were 21 parts. He listed subdivision regulations and talking to all of the water districts, sewer districts and towns that had water and sewer to revise their rules. Steve revised his question to ask for the top three of the 21. Wally supplied the third one as they needed a set of good standards about stormwater drainage. That would go in the growth policy. The discussion was already there but they needed to change in the subdivision rules and [have] a separate rule regarding stormwater. Steve gathered from Wally that there were 21 things in the subdivision regulations. Wally clarified there were 21 things the [2003] growth policy was supposed to do that didn't get done. Steve checked that if they got those 21 things done, they could consider that the DMR would be redundant. Wally said they were redundant. Steve said they weren't redundant now because they hadn't done those 21 things. The DRM would be redundant if they did those 21 things that would replace or repeal the DRM. Wally said the way it sat currently, you had it as advisory as part of the growth policy. It had to be considered in the subdivision review. They could extract a bunch of that stuff using the current subdivision regulations. Steve gave an analogy where people at the Board

of Adjustment (BOA) sought a variance to change a setback. If the Finley Point zoning regulations were advisory, would they have been able to stop them from building right next to the property line? Wally said you couldn't stop them unless you had something else they needed. They needed septic approval for the septic/sanitation issue. Steve concluded it was a good thing to have setbacks in regulations. Wally said that was in zoning. The DMR had no setbacks. He asked if that answered Steve's question. Steve replied not entirely.

Frank asked how many DMR variances hadn't been approved by the BOA that Jacob had seen. Jacob hadn't seen any. Frank attempted to conclude the BOA had approved all variance requests from the DMR, and Joel said that wasn't right, as did Lita. Frank changed his statement to cover the last 3 years. Frank checked that the application had to have a bunch of stuff like consultants. Jacob explained that a DMR variance was usually tied to subdivision review so they did have a consultant as part of the [subdivision review] process. Frank didn't think cluster developments were being used. If these were advisory, would the rules be applied differently? Jacob said that in his opinion, they would use the document in the same way it was being used now. The difference that he saw was in Steve's question about whether it had the same enforceability. For day-to-day subdivision use, they would refer to it the same as they did now. Frank asked if there was a cost to get guidance for a subdivision if the DRM was advisory. Jacob explained they would do the same thing they did now—the first thing they would do is to check the Density map. Steve asked what would happen if they were in a 20-acre density area and wanted to make four 5-acre parcels. Jacob said they would tell them the growth policy, which provided a Density map, did not provide enough density in that area for what they wanted to do. They might submit a written narrative that expressed why they felt it was appropriate based on the standards of evaluation, and then [staff] would review that. If staff still said no, they could appeal to the Commissioners. Steve asked if the public would be involved in that decision at some point. Currently, if someone wanted to do this, they would go for a variance in front of the BOA and it would be an opportunity for public comment. Wally said if it was a major subdivision, the Planning Board had to review the whole thing, and so did the Commissioners. If it was a first minor subdivision, it went to the Commissioners. Jacob added that [staff] sent out a courtesy notice to adjacent owners for first minors. For a major subdivision, they would notice the public hearing and the adjacent owners. For a minor, they would just notice the adjacent owners and it would go on the Commissioners' agenda at least 48 hours ahead of time.

Dave had trouble understanding the problem that they were trying to solve. They were being told they had a lot of issues but that nothing would change whether these were advisory or regulatory. That told him that they really hadn't identified what the problem was yet. He wasn't prepared to vote or make a recommendation because no one had convinced him how they were going to address the issues that had been raised tonight if these were made advisory. He was from the old school where if you had a problem, the first step was to clearly define what the problem was, before you came up with the solution. With the proposal tonight to make this advisory, it felt like they had a proposed solution in search of a problem. Lee said to tack onto that, the only thing he heard about making these advisory rather than regulatory was that there was less cost involved. Was there something he missed that makes it appealing to have these advisory? Dave said if the problem was the 21 issues that Wally talked about, then maybe the Growth Policy needed to address how they were going to deal with those 21 issues, and not whether or not the DMR was advisory or regulatory. If they took care of the 21 issues, it

sounded like the density became a moot point. Wally said that was the point. The DMR was supposed to take care of those 21 points and it did not. That was the problem. Dave said the problem wasn't the DMR. It was the implementation of what was supposed to happen. Wally said it was the wrong tool. The subdivision regulations should have been better. The capital improvements plan should have been done.

Dave said coming back to the issue tonight on pg. 55 or wherever and how they were supposed to deal with it, he understood what Wally was saying but he didn't understand how making something advisory or regulatory in and of itself addressed that. Steve said they'd been told by several people that if they made this advisory, nothing changed. If nothing changed, then why make it advisory? Gale said the other side of the argument was why not change regulatory to advisory if nothing changed. Steve said the reason was that those who wanted to make it advisory said nothing would change. The people who wanted to keep it regulatory were afraid something would change. Gale said the planners were the best source of information and said pretty much that nothing would change. Steve said Jacob hinted a moment ago that he wasn't sure.

Abigail thought going from regulatory to advisory was the two far ends of the spectrum. It was like not having a speed limit, which turned into a disaster. She gathered that with less money, the County was searching for ways to get more money. By making things advisory, it would encourage growth in places where it wouldn't happen before, therefore getting more funds to the County. In the public emails and comments that she'd read, only two asked for the change to advisory, one of which was from Gale. The Board was here to give a different voice and an opinion of the public, which was a landslide of people asking for the DMR to stay regulatory. It wasn't fair that people didn't get to live in rural areas because of density regulations but if you developed the rural areas and paved the roads, then they were no longer rural areas. It seemed like most people living here appreciated that about the County. As far as Planning, there had been 4 different Planning directors since she'd been here, who had different characters. They couldn't predict that the next Planning director would have the same views and ideas as Jacob. If the DMR went to advisory, it opened Pandora's box to do a lot of things that were not allowed right now for good reason. She noted there were people with a large amount of acreage and children who would like to have their own portions to develop their portions and the DMR was hindering them in some way, so there were some kinks in the chain but not so much that it should be advisory rather than regulatory. Some things could probably change but not everything. She mentioned the happy medium, rather than going far to the side. This was concerning to her.

Dave said different people had different implementation. He gave examples. In 2003, there were things that should have gotten done that didn't. His concern was if they made the change that was proposed tonight in the density portion of the growth policy and made it advisory, in ten years, they would be sitting here listening to Wally explain why the 21 things didn't get done. If the 21 things were the problem, then they needed to address those. If that meant talking in the implementation section of the growth policy that these were the issues they needed to deal with, then let's deal with them, rather than getting hung up on whether to make this advisory, which wouldn't resolve the problem. They needed to resolve the problem.

Wally said a lot of the issue was how to solve the problem. The mechanism to solve it was the other mechanisms that let you implement what it was. The DMR regulated only density. No data said regulating density provided the other amenities. That was the problem. Steve asked if Wally was suggesting that they have County-wide zoning. Wally said they already had that with the DMR. Steve said that wasn't like the zoning districts that had setbacks and so forth. Wally said it was less detailed. Steve checked that the zoning districts solved those 21 problems. Wally said they solved some of them. Steve checked that Wally was saying they wanted to do that with the rest of the County. Wally said what they needed to regulate were the things they wanted to get to: water quality, wildlife habitat, transportation [inaudible], school access, preserving open space—go through the list. He verified for Steve that you didn't do that with zoning.

Janet relayed that she worked with wildlife biologists who said that density was a major factor in protecting wildlife habitat. It was a good tool for that. The more homes you had in a sensitive wildlife area, the more dogs and cats and species that would affect ground-nesting birds and other species you'd have, and the more conflicts with big game. That was a huge issue. Density did apply to protecting wildlife habitat. Density also applied to protecting groundwater quality. If you were in a rural area that didn't have a community sewer system and you allowed half-acre or 1-acre lots, she had concerns about whether or not DEQ would regulate those septic systems in a way that protected the groundwater. This was her concern when they passed the DMR in the first place: making sure that some of the highly sensitive groundwater areas didn't have high densities allowed. DEQ told her personally that a lot of times they just rubber-stamped what the County did because they didn't have the staff to look at every subdivision that came before them. If [the Board] approved subdivisions that weren't regulated by density or if they had a different planner in the future who didn't look at the density if it was advisory, then they could have future groundwater issues. She was concerned about these vulnerable areas. If you had too many septic systems, it would end up in people's drinking water. They would lose the value of their home because you couldn't clean up groundwater. Once it was contaminated, it was gone. Density affected groundwater.

Wally said density affected it but density didn't solve the problem. The fact that it was advisory said that when you subdivided, you had to consider it. That was a reason to say no, to extract, to waive the [inaudible] SID's and the reason to do all of it. Janet said by having additional tools, let's not throw out the DMR because it didn't work by itself. Let's develop the rest of the tools and keep the DMR because it was a tool people could count on. It had been in place for more than 12 years. People like Chuck bought his land because he looked at that map and it told him he wouldn't have a lot of neighbors who would subdivide their property. A lot of people didn't understand all of the regulations that Wally as an attorney or that they as a Planning Board had to deal with, but people could understand a map. They could understand if it was regulatory and was going to protect their land values, and they felt good about that. That was why they were hearing so much public comment to keep this as a regulatory document. They realized it wasn't the only tool. They weren't arguing about that. They were saying to keep it as one of the tools. Steve added before they got rid of it, they needed to make sure they had all of the tools they needed in place to achieve the same kind of thing. Once those tools were in place, then they could look and see if they could live without the DMR.

Abigail asked if this was the first time they'd actually looked over these regulations and the growth policy since they were made 15 years ago. Wally said they had a discussion about the DMR a year or two ago. Frank said they still had to be revised and that they were expired. Steve said they needed to be updated. That was what the current draft of the growth policy said.

Steve said the Planning Board needed to decide whether to make tweaks in what was in the second draft or whether they wanted to throw out that section and replace it with the section, possibly with edits, that they got that was titled 'pg. 55, Density'.

**Motion made by Steve Rosso, and seconded by Dave Goss, to leave the Density section that began on pg. 55 and continued to pg. 58 (where Land Conservation started) in the January Growth Policy Draft Two the way it was, with possible edits.**

Discussion ensued to clarify that they were deciding which section to edit and that the section in the motion kept three options, whereas the section entitled 'pg. 55, Density' had one. The gist of the motion was to leave the version of the Density section as it was in draft 2 [of the growth policy] as opposed to putting in the alternative page.

**Motion carried, 5 in favor (Steve Rosso, Lee Perrin, Janet Camel, David Goss, Abigail Feiler) and 3 opposed (Sigurd Jensen, Rick Cothorn, Frank Mutch).**

Steve said they would now work on edits in the selected text. Frank liked the comment 'and the land remains in taxable status' in the last sentence on pg. 58.

Frank, pg. 61, last sentence of #2, fuel reduction: Replace 'anticipated' with 'essential' or similar word to be more forceful. Steve suggested 'anticipated and essential'. Janet agreed.

Steve wasn't sure how far their recommendation would get with the County Commissioners. The Planning Board was an independent group working on a growth policy and doing the best they could, trying to consider the public input and come up with what they thought would be a good growth policy to recommend to go on to the County Commissioners. Things might change when it got that far. If they did, and the other section was implemented after the Planning Board was done, he would like to see some changes. Janet asked about addressing chapter 9 and what Wally said with the 21 other steps that needed to be taken. She would like to make sure those that were most important were incorporated in the implementation chapter and that they worked on a timeline for getting those things done and for amending the DMR. They did need to make some changes to the DMR. If they made Frank's one change to chapter 8 and then worked on chapter 9 on the things that Wally brought up today, it seemed like they'd address the comments that were in the room. What she heard was to amend the things in the regulations that weren't working and keep them as regulatory. They needed time to do that. They still had the 3 options open. In chapter 9 next month they could work on what their priorities would be, address the issues that Wally raised today, work on when those regulations would be improved and on other people's concerns. She thought prioritization was key.

Steve thought Wally was talking about 21 steps that he'd identified from the old growth policy that would have given more opportunity to developers to actually do subdivision in the areas



recommended on the map. Joel confirmed that he'd read Wally's review letter of those. Steve checked that the pertinent ones were in the new implementation list. Joel said he'd need to double-check that. Dave concurred. He thought they had an obligation to the Commissioners since the majority told them tonight that they didn't think the proposal in front of them was the way to go. They had an obligation to give them some input as to which way they thought it should go. That was what the Planning Board was here for. Gale said there was an argument that as soon as they adopted the new growth policy, the DMR would go away. In that resolution, it said that the DMR were adopted to implement the goals and objectives of the 2003 growth policy. If that growth policy went away, did the DMR go away? That argument was out there.

Wally provided that the first Lake County growth policy was done in 1962. Steve guessed that somewhere in those earlier growth policies, goals and actions involved zoning district and creating zoning districts. Those regulations hadn't gone away when those growth policies ended. It didn't make sense that if a growth policy talked about coming up with a DMR, when you revised and updated a growth policy, it got rid of that regulation. Regulations were regulations. Wally said the purpose for which the DMR was created was to do the 2003 growth policy. Steve asked if it was implemented to achieve the goals of the growth policy or to achieve the growth policy. Gale said it was to achieve the goals. Steve referred to those goals continuing. Gale said they weren't. Steve checked that goals of managing growth and limiting urban sprawl were no longer goals. Gale said the new growth policy had different goals than the 2003 growth policy. Those overall goals were certainly in there. Steve said that in chapter 9, he identified a bunch of goals that the DMR helped achieve. As long as they had goals that the DMR helped with, they would live beyond the 2003 growth policy. Gale said the Board needed to understand there was an opposing argument. Steve said they would continue with the idea that the new growth policy had enough relationship with the DMR that it would stay as a tool to implement this growth policy also, unless the attorney said otherwise. They had some ideas about what to do with implementation as far as making sure the actions would support the DMR.

Steve commented it was a mistake to dive into chapter 9 at 9:30pm. Jacob agreed it was late. As far as moving forward, he'd have to talk to the Commissioners and see what they wanted to do about that. Janet checked on the consultant contract. Gale said the Commissioners allocated an extra \$5000 to Land Solutions for extra work on the growth policy. \$35,000 had been put towards it. Extending the timeline cost money. Janet asked if no work was done in the meantime, if there was no cost. Joel said he wouldn't do anything without the Commissioners and Jacob saying to do it.

#### **MINUTES (9:32 pm)**

##### **Dec. 13, 2017 minutes:**

On pg. 7, in the second section in the 10<sup>th</sup> line, Janet changed 'on pg. 2 of' to 'on pg. 2.' Towards the end of the second line of the page, Steve changed 'that land use' to 'land use.' On pg. 12 in the second bullet in the 'Janet' bullet, Janet changed 'it would contaminate' to 'it could contaminate', and 'gravel pits. It' changed to 'gravel pits, although it'. She also changed 'responsibility but they could' to 'responsibility. We should'. On pg. 13, in the next to last line, Steve changed 'It would of benefits to the cities and to everybody' to 'It would benefit the cities and everybody'. In the third bullet at the top of pg. 16, Janet changed 'they had stuff' to 'they had stops'.

**Motion by Rick Cothorn, and seconded by Sigurd Jensen, to approve the Dec. 13, 2017 meeting minutes as amended. Motion carried, all in favor.**

**January 10, 2018 minutes:**

On pg. 4, Gale wanted to see the comments about the MOU stricken until they found out the status of the MOU. Steve suggested rather than changing what was said at the meeting, they could put in square brackets that the Commissioners have not found evidence of receiving the MOU. Lita said she would put it in the brackets as an editor's note. Steve made changes. On pg. 2 at the end of the first bulleted item, the lone 'P' was eliminated. On pg. 3 in the first line of the last paragraph, 'Basis' changed to 'Basin'. In the second bullet at the top of pg. 6 in the second line, 'it should be' was eliminated. On pg. 11 in the first full paragraph, Janet made changes. In the 4<sup>th</sup> line, 'It talked about' changed to 'The DMR's talked about', and 'parcel. That' changed to 'parcel that'. In the last sentence of that paragraph, 'should be limited' was added between 'development' and 'where'. On pg. 8, Gale and Janet talked about a statement. Lita checked that the minutes reflected what was said at the meeting and that was so, so no change was made. On pg. 15, Lita changed the date at the top of the page from 'December 13, 2016' to 'December 13, 2017'.

**Motion by Rick Cothorn, and seconded by Lee Perrin, to approve the January 10, 2018 meeting minutes as amended. Motion carried, 9 in favor (Steve Rosso, Sigurd Jensen, Rick Cothorn, Frank Mutch, Lee Perrin, David Goss, Abigail Feiler) and one abstention (Janet Camel).**

**OTHER BUSINESS**

None.

**Steve Rosso, chair, adjourned the meeting at 9:44 pm.**